NO. 85-1384

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

WILLIAM R. TURNER, et al., and
DR. LEE ROY BLACK, et al., Petitioners,

v.

LEONARD SAFLEY, et al., and
MARY WEBB, et al., Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the superintendent of a particular Missouri correctional facility may routinely prohibit adult female inmates from marrying other adults?

2. Whether officials of one Missouri correctional facility may routinely prohibit all correspondence between inmates, including completely innocent mail which does not threaten the institution's security or order?

LIST OF ALL PARTIES

Petitioners' statement as to the parties respondent is inaccurate. In addition to Leonard Safley and Mary Webb, P. J. Watson-Safley, Robert E. Thompson, Linda Scott Thompson, William Quillun, Diana Finley, Nancy Row, Judy Henderson, Shirley Lute, Connie Flowers, Patrick Barks, and Alice Garnett are all named class plaintiffs.

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The Court of Appeals' Opinion is reported as Safley v. Turner, 777 F.2d 1307 (8th Cir. 1985), aff'g 586 F. Supp. 589 (W.D. Mo. 1984).

STATEMENT OF THE CASE

Petitioners' Statement of the Case is misleading insofar as it fails to acknowledge that the practices found unconstitutional by the District Court occurred almost exclusively at one Missouri prison, the Renz Correctional Center. The District Court found that inmates at most other Missouri correctional facilities are routinely allowed to be married and are generally allowed to correspond with each other. A23, A21.

In contrast, Renz inmates were informed that the institution did not permit marriages and received an orientation booklet stating that they could not write or receive mail from other inmates. Id. It is significant

that most prison administrators in this state did not impose the restrictions routinely practiced at Renz.

The previous regulations of the Missouri Department of Corrections permitted prison officials at one institution to deny, in an arbitrary and capricious manner, inmate marriages and innocent correspondence. The revised regulations in effect today -- promulgated by agreement after the District Court's order was entered -- more tightly confined Renz's ability to prohibit marriages and correspondence and simply brought Renz into line with the existing practices at other Missouri correctional facilities. Accordingly, the Court should not conclude that the District Court's

order caused massive upheaval throughout the Missouri prison system.

The second misleading aspect of the Petitioner's Statement of the Case is that it fails to acknowledge respondents' consistent position that prison authorities could place reasonable time, place, and manner restrictions upon marriage ceremonies and could read all non-privileged incoming and outgoing inmate correspondence to protect the security and order of the institutions. The issue presented to the Courts below was whether prison officials could totally prohibit inmate marriages and totally forbid all correspondence, however innocent and legitimate, between friends incarcerated at different institutions.

Petitioners also ignore the District Court's findings that officials at Renz repeatedly violated extant Department of Correction rules concerning marriage and correspondence, A21-22; that Renz stopped innocent correspondence between inmates and members of the public, A21; that inmates were harassed and threatened for attempting to exercise their correspondence and marriage rights, A25; and that the Missouri correctional system's grievance process provided no effective check upon arbitrary and capricious actions by the Renz administration. Id. They fail to mention the lower Court's factual findings that Renz's alleged concerns about the effect of marriage and correspondence

upon security, order, and rehabilitation were speculative and exaggerated. A17; A22-23; A27 and n.1; A30-31.

Finally, the Court should note that in the twenty-two months since the revised regulations were promulgated by agreement of counsel for petitioners and respondents, the Missouri Department of Corrections has never asked the lower courts to modify those regulations in any way.

REASONS FOR DENYING THE WRIT

Because the unique factual circumstances of this case justify the lower courts' decisions and limit its applicability to certain institutions of the Missouri prison system, this case does not merit this Court's attention. There is no real conflict of decisions in the Courts of Appeal and the opinion of the Court below gave appropriate deference to this Court's previous opinions. None of petitioners' arguments on the merits warrant this Court's time.

I. <u>The peculiar focus of this case on one correctional facility limits its applicability and importance</u>.

Throughout this litigation, petitioners have consistently stressed that the unique situation of Renz Correctional Center -- a minimum security institution holding most of Missouri's female offenders and certain male inmates in protective custody -- justified petitioners' conduct. The District Court found that other Missouri prisons routinely allowed inmates to correspond and marry; the greatest restrictions on those rights were practiced at Renz. A21-23, A2-6.

Many of the practices at Renz violated extant regulations of the

Missouri Department of Corrections. A20-22. Moreover, petitioners repeatedly stopped correspondence between inmates and members of the public in direct contravention of this Court's holding in Procunier v. Martinez, 416 U.S. 396, 408 (1974). A21.

For obvious strategic reasons, petitioners have submerged the fact that virtually all the complaints arose from conduct at one institution run by a paternalistic superintendent. Review of the Petition might leave the mistaken impression that the District Court's order caused widespread changes at Missouri's 12 correctional facilities; more accurately, it simply brought Renz into line with

the practices followed at other Missouri prisons.

Moreover, petitioners ignore the District Court's crucial factual findings that at Renz the mail censorship regulations and practices were applied in an arbitrary and capricious manner, A31; that the prison had dealt successfully with the security concerns arising from marriage and correspondence, A22-23; and that inmates were threatened and harassed for attempting to exercise their rights. A25. The pattern of abuse by prison officials of acknowledged inmate rights guaranteed by Department regulations itself justifies the rulings of the Courts below. This is not a case where the ultimate outcome

turned on the standard of review adopted by the Court.

On appeal, petitioners unsuccessfully challenged the District Court's factual findings. A16-18. Petitioners now ask this Court to review the findings for a second time, without supporting this request with a "very obvious and exceptional show of error." Grover Tank & Manufacturing Co. v. Linde Co., 336 U.S. 271, 275 (1949). See also Rogers v. Lodge, 45 U.S. 613 623 (1982). Petitioners' complaint about the findings is just sour grapes.

Nothing in this unusual case warrants the attention of this Court.

II. No conflict of decisions exists to justify this Court's review.

Both the District Court and the Court of Appeals carefully analyzed the opinions of this Court and other courts of appeal in considering prisoners' correspondence and marriage claims. A6-16. Both recognized the prison's interests and the need to give appropriate deference to the opinions of corrections officials. A27-28; A6-10. The Courts below concluded, however, that inmates' fundamental rights to marry and to innocent correspondence "retain the highest level of protection . . . ." A8.

Petitioners never identify direct conflict between the Court of Appeals' opinion and an opinion of this Court or another Court of Appeals. At most,

petitioners argue that the ruling of the Courts below "violates the spirit of this Court's analysis of inmates' rights in a prison setting" or "is in conflict with this Court's principles . . . ." Petition at 9, 13.

In the absence of a clear conflict, petitioners latch onto language in certain cases stressing deference to prison officials, seemingly unmindful that "judicial pronouncements derive their meaning solely by reference to the facts of individual cases." Abdul Wali v. Coughlin, 754 F.2d. 1015, 1032 (2d Cir. 1985). Petitioners all but ignore this Court's reminder "that convicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement in

prison." Bell v. Wolfish, 441 U.S. 520, 545 (1979). See also Jones v. North Carolina Prisoner's Labor Union, Inc., 443 U.S. 119, 125 (1977).

While there is sometimes tension between inmates' assertion of constitutional rights and prison authorities' legitimate needs, the lower courts are perfectly capable of reconciling those competing interests by applying the standards articulated by the Courts of Appeal. The reasoning of cases like Safley v. Turner, 777 F.2d 1307 (8th Cir. 1985); Abdul Wali v. Coughlin, supra, 754 F.2d at 1033; Bradbury v. Wainwright, 718 F.2d 1538 (11th Cir. 1983); Storseth v. Spellman, 654 F.2d 1349, 1355-56 (9th Cir. 1981); and Guajardo v. Estelle,

580 F.2d 748, 753-57 (5th Cir. 1978),

has been explained by Judge Kaufman:

> Our reading of the cases suggests a tripartite standard, drawn by reference to the nature of the right being asserted by prisoners, the type of activity in which they seek to engage, and whether the challenged restriction works a total deprivation (as opposed to a mere limitation) on the exercise of that right. . . .
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> * * *
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> Where . . . the activity in which prisoners seek to engage is not presumptively dangerous, and where official action (or inaction) works to deprive rather than merely limit the means of exercising a protected right, professional judgment must occasionally yield to constitutional mandate. In these limited circumstances, it is incumbent on prison officials to show that a particular restriction is necessary to further an important governmental interest, and that the limitations on freedoms occasioned by the restriction are no greater than necessary to

> effectuate the governmental objective involved.

Abdul Wali v. Coughlin, supra, 754 F.2d at 1033, citing Procunier v. Martinez, 416 U.S. 396, 413 (1974).

This discerning method of analysis harmonizes the opinions of this Court and provides a workable standard for the lower courts. Petitioners apparently do not grasp the concept, for they unfairly accuse the Court of Appeals of "attempt[ing] to limit this Court's analysis and the standard as applied in Jones v. North Carolina Prisoner's Labor Union, Inc., Bell v. Wolfish, and Pell v. Procunier . . . to only those activities which were 'inherently dangerous' and were 'inconsistent with the fact of incarceration.'" Petition at 9 (citations

omitted). They further claim the Court of Appeals "contend[ed] that it was only activities engaged in by prisoners which were 'inherently dangerous' which should be afforded the deference of the rational relation test . . . ." Id. at 12.

With all due respect, the language for which Petitioners castigate the Court of Appeals is not in its opinion. Perhaps petitioners misunderstood the Court of Appeals' conclusion "that the exchange of inmate-to-inmate mail is not presumptively dangerous nor inherently inconsistent with legitimate penalogical objectives." A12.

This Court should reject petitioners' implicit assumption that the lower courts (and, presumably, prison

officials) do not have the mental acuity to follow the careful analysis of cases like Safley and Abdul Wali. The standard adopted by the Courts of Appeal is workable and properly deferential but still protects the essence of fundamental rights such as pure speech and the marriage decision.

Not surprisingly, petitioners would prefer a simpler rule that treats all inmate claims precisely the same and incidentally allows prison administrators to do what they damn well please. The District Court recognized a higher calling:

> The problem with placing total reliance on the views of prison administrators would be their natural inclination to form opinions based on convenience, conceivable though remote security interests, financial considerations and the like.

> While giving due deference to such testimony, the Court has an inescapable duty of striking a constitutional balance.

A27, n.2.

In petitioners' view, an inmate's desire to be married or to write an innocent letter to a close friend deserves no more protection than another inmate's desire to wear prayer caps and robes outside religious services. See Rogers v. Scurr, 676 F.2d 1211 (8th Cir. 1982), cited at Petition 14, 15.

Respondents believe that the lower courts are capable of more discerning analysis. The absence of any conflict in the applicable standard compels rejection of the petition.

III. The Court below reached the correct result.

Beyond authority of any Missouri statutes or Department regulation, Superintendent Turner of Renz Correctional Center routinely denied the marriage requests of the adult inmates under his supervision, who he paternalistically called "my women." Regardless of whether they wanted to marry another inmate or a free member of the public, Mr. Turner invoked his "inherent authority" to forbid marriage to female inmates.

The rule of law also suffered at the hands of Caseworker Englebrecht, who presided over inmate correspondence. In direct contravention of the prior Department of Corrections rules

that explicitly authorized inmate-to-inmate correspondence under some circumstances, Renz's staff published and enforced a correspondence policy that prohibited virtually all Renz inmates from writing innocent letters to friends at other correctional institutions. Other correspondence regulations were frequently breached at Renz, sometimes in direct violation of Procunier v. Martinez, 416 U.S. 396 (1974).

The lower court's findings that inmates were threatened and harassed for attempting to exercise their marriage and correspondence rights were based in part on testimony that Superintendent Turner shredded an inmate's grievance before it could be submitted to his superiors and told

one plaintiff "that we could get all the court orders we wanted, but he didn't have to honor them." His disdain for the rule of law amply justified the District Court's findings.

Respondents entered into the record dozens of letters and birthday cards, both to and from inmates and to and from members of the public, which were stopped or refused by Renz officials. Respondents challenged petitioners to point to anything in the many exhibits which threatened the security or order of Renz or any other prison. That challenge went unanswered.

At trial and on appeal, petitioners speculated about the evils which could possibly flow from unbridled correspondence and rampant

inmate marriages. The trial court found the stated concerns were exaggerated. A22-23; A27; A30-31. After reviewing the evidence, the Court of Appeals concluded that "[n]o specific incident of the realization of any of these concerns, involving these or any other inmates, was alleged or shown." A17.

Petitioners continue to adopt an apocalyptic tone in this Court, rhetorically forecasting that the results of the lower Courts' rulings will be "a high price to pay for experimentation in theoretical prison management." Petition at 14.

The fevered pitch of petitioners' alleged concern seems painfully forced for three reasons. First, prior to this case most Missouri institutions

routinely allowed inmate-to-inmate correspondence. A21. Secondly, the District Court explicitly found that Missouri prisons "can effectively cope with the problems through less restrictive means, such as increased scanning of the mail of potentially troublesome inmates." A31.

Finally, petitioners and their counsel drafted correspondence and marriage regulations which have been in effect at Missouri institutions since June, 1984. They have never approached respondents' counsel or the Court with any suggestion that the rules should be substantively modified to protect the Department of Corrections' legitimate interests.

What smolders beneath the surface of this case is petitioners'

unarticulated value judgment that Renz inmates' rights to correspond and marry are simply not worth the administrative inconvenience caused by an occasional marriage and the time spent scanning inmate correspondence. They fail to explain how such inconvenience was readily accepted for years at other Missouri institutions before the practices at Renz were challenged.

At least petitioners' defense of the marriage rule is intellectually honest. They straightforwardly contend that Superintendent Turner should be allowed to substitute his judgment as to whether "his women" should be married rather than to allow his adult charges to make that decision for themselves. A17.

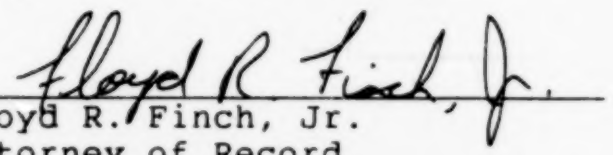
Petitioners conveniently failed to mention that the one marriage of a female inmate approved by Superintendent Turner ended in divorce a few months later. In contrast, respondents Leonard Safley and his wife -- who could only be married while in temporary federal custody on a writ of habeas corpus ad testificandum -- recently celebrated their fourth wedding anniversary.

The decisions of the lower Courts were soundly based on law, properly deferential to the needs of prison administrators, and wisely vigilant to the protection of legitimate inmate rights. Those opinions should not be disturbed.

CONCLUSION

For these reasons, this Court should deny this petition for certiorari.

Respectfully submitted,



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